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SIPDIS

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SUBJECT: LETTER FROM INDEPENDENT EXPERT ON AFGHANISTAN
REGARDING USG INTERPRETATION OF HIS MANDATE.

1. Mission received the following letter from the Independent Expert on Afghanistan, Cherif Bassiouni on March 30, 2005. The letter is addressed to Ambassador Moley and responds to a letter sent on March 18, 2005 in which Ambassador Moley offered Mr. Bassiouni a briefing on the conditions of DOD detention facilities in Afghanistan.

2. Begin text.

23 March 2005

Dear Ambassador Moley,

This is to acknowledge your letter of March 18th, received by OHCHR March 21st and forwarded to me in Chicago. As you correctly state, the mandate includes human rights violations in Afghanistan. There are no exceptions. Consequently, your statement that "the mandate covers Afghan prisons and their conditions, but not U.S. detention facilities" does not conform to the letter of the mandate. There is therefore no valid legal basis for the United States refusal to open its detention facilities in that country to verification of compliance with human rights legal obligations.

I agree with you that the mere denial of access is not to be considered as confirmation of allegations of human rights violations. The sources of these allegations, however, include U.S. governmental reports, portions of yet unpublished reports made available to the U.S. press, published reports in the U.S. and international media, published reports by non-governmental organizations, and books. They refer to arbitrary arrest and detention, forceful removal of persons from Afghanistan to areas outside the country, and cruel, inhuman, and degrading treatment or punishment, including torture. These are sufficient to raise concern with any conscientious mandate holder to investigate.

Furthermore, as the government of the United States is well aware, there have been reports, both oral and in writing by the ICRC concerning treatment of detainees in violation of international humanitarian law, including violations of human rights law, which have not been published. Moreover, this mandate holder has interviewed former detainees who claim that they were tortured by U.S. personnel in U.S. detention facilities in Afghanistan. Consequently, all of this information cannot be ignored by the mandate holder.

I am delighted to note in your letter that I am now being offered the opportunity of a briefing in Washington or Geneva, and I will gladly avail myself of the opportunity as soon as I hear more specifically from the person in charge. For the record, your letter of December 23rd had indicated that this was not being considered in my case, and I welcome the change. However, such a briefing is not a substitute for my continued request to inspect the facilities at Bagram, Kandahar, and other facilities housing persons detained by the United States who were seized in Afghanistan.

Lastly, I agree with you that the United States Armed Forces take seriously allegations of wrongful behavior, that it endeavors to investigate credible reports, and that it takes appropriate action against those who have engaged in wrongful conduct. Precisely because of that, I believe that it would prove easy to work with the appropriate military personnel, should they be directed to cooperate with this mandate holder.

Sincerely yours,

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M. Cherif Bassiouni
Independent Expert.

End text.

Moley